

In the Matter of the BILSEY War Crimes Trial

and

In the Matter of the Accused IRENE GRESE

Whereas on the 17th day of November 1945 the Military Court trying the case of the above mentioned accused pursuant to the Royal Warrant for the Trial of War Criminals dated 14th June 1945 (as subsequently amended) found the said IRENE GRESE GUILTY on both counts in the indictment against her and thereon sentenced her to DEATH by hanging.

NOTWITHSTANDING I, Lionel Sydney William Cranfield, a Temporary Major in His Majesty's Army, appointed as Defending Officer to the said accused HEREBY REQUEST this BENCH against MURKIN on behalf and on the instructions of the said IRENE GRESE pursuant to Regulation 10 attached to the said Royal Warrant.

MY POSITION is that the Finding and Sentence above mentioned be annulled for the following reasons.

1. That the finding was bad in law in that
 - (a) the offences alleged against the accused in the Charge Sheet and the evidence do not amount to a War Crime as charged of which she was found Guilty. In support of this contention I adopt the argument presented to the Court by Colonel H A Smith which will be found in Volume 45 of the Transcript of the Official Shorthand Notes of the Proceedings pages 26 to 29.
 - (b) since the accused must be accepted as a civilian and NOT a member of the Armed Forces there being no evidence before the Court to the contrary and the only evidence pertinent to this matter (I refer to the evidence of JCSET HUTCHER in Volume 20 of the Transcript of the Official Shorthand Notes of the Proceedings at page 42) supporting this proposition and there is no evidence or allegation against her of illegitimate hostilities, espionage, war treason, marauding or other war crimes which can be committed by a civilian. THEREFORE she as a civilian not engaged in hostile action or warfare against the armed forces of the Allies is incapable of committing a War Crime of the nature charged that is a violation of the rules of warfare. In support of this contention I refer to the argument of Colonel H A Smith at page 29 of Volume 45 of the Transcript of the Official Shorthand Notes of the Proceedings.
2. That the Court was unable to give proper consideration to the Defence of the accused because the Court was misinformed in law by the Deputy Judge Advocate General in that
 - (a) He directed the Court that a statement of the law relevant to the case was to be found in Volume II of Goethals International Law although this book was published in 1944, after a number of the alleged offences had taken place. He omitted to instruct the Court as to the relevant International practices and decisions of national Courts on International law from which the material law should be derived.
 - (b) He omitted to give the court adequate direction as to whether the alleged acts were legal under the accused's domestic law and if so what was the effect of any conflict between that domestic law and International law on the proof to be required of mens rea in the accused.
 - (c) He omitted to inform the Court as to the position of the accused in regard to committing a War Crime if the Court found her not to be a member of the Armed Forces.
 - (d) He failed to direct the Court as to the proof of conspiracy or concerted action necessary in law to find the accused guilty of a joint offence.

- (e) He failed to direct the Court as to the circumstances in which they could receive as evidence against the accused evidence given against the other accused..
- (f) He omitted to direct the Court as to what is meant by an unchallenged rule of warfare so that in particular the Court would be in a position to consider the argument addressed to them by Capt J. A. Phillips FC RA (Volume 49 page 12 et seq Transcript of the official shorthand notes of the Proceedings)
- That the sentence was excessive in that
- (a) the accused at the time the more serious of the above offences were committed was under 21 years of age and the above offences were due to some fault of obedience to superior orders received in a quasi military capacity as to the remainder of obedience to the lawfulness of the general practice and arrangement adopted by the accused to procure his said conduct consistent with the propaganda instructions and directions of the leaders of her country since she was of course to consider such instructions and
- (b) the Court have ignored the fact that the prosecution have in this decision, before a Deputy Judge Advocate, given it ~~is a strong~~ to see that the accused has an honest witness who will admit to the offences of aiding and abetting the German. See the evidence of William G. Dethman, the 1st witness.

At the said court on November 18/18.

John
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B.C. C.R.